1262.

SUPREME COURT OF THE UNITED STATES.

No. 182.

THE UNITED STATES, APPELLANT,

vs.

ONE BOX OF SPECIE, BAPTISTE GUILLEM, AND JEAN CAZALETTE, CLAIMANTS.

APPEAL FROM THE CIRCUIT COURT, U. S., FOR THE DISTRICT OF LOUISIANA.

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United States circuit court, fifth circuit, and district of Louisiana.

ONE BOX OF SPECIE
vs.
J. T. McLAUGHLIN and the United States.
} On appeal from the district court.—No. 1657.

Pleas and proceedings before the honorable John McKinley, presiding judge of the United States circuit court, fifth circuit, and district of Louisiana, at a circuit court of the United States, in and for the fifth circuit and district aforesaid, being the December term of the said court, begun and held at the city of New Orleans, in the district aforesaid, on the twentieth day of December, being the third Monday of said December, in the year of our Lord one thousand eight hundred and forty-seven.

Be it remembered, that heretofore, to wit, on the thirtieth day of December, in the year of our Lord one thousand eight hundred and forty-seven, came the appellants, Guillem and Cassalet, by their proctors, C. Watts and H. R. Denis, esqrs., into the clerk's office of the said court, and filed a complete and correct transcript of a certain cause before that time decided in the district court of the United States for the district of Louisiana, wherein J. T. McLaughlin and the United States were plaintiffs, and One Box of Specie was defendant; which said transcript is in the words and figures following, to wit:

United States district court, in and for the district of Louisiana.

Be it remembered, that on the tenth day of April, in the year of our Lord one thousand eight hundred and forty-seven, John T. McLaughlin, in the capacity of prize-master, came into the said court, and gave the same to understand as follows, to wit:

To the honorable the judge of the district court of the United States for the district of Louisiana:

John T. McLaughlin represents to the honorable judge of this court that he has brought to the port of New Orleans a sealed box, represented to contain an amount of money taken in the French barque Jeune Nelly by the United States steamer Hunter, under his command, for violation of the blockade of the port of Vera Cruz.

April 10th, 1847.

(Signed) JOHN T. McLAUGHLIN,
Lieut. commanding.

Judge's order on the foregoing.

The prize commissioner is directed to take the sealed box mentioned and specified above, said to contain specie, and to place his seals thereon, and to deposit the same specially for safe-keeping in the Canal Bank of the city of New Orleans.

April 10, 1847.

(Signed) THEO. H. McCALEB, *U. S. judge.*

And, on the 12th April, 1847, the following libel was filed in the clerk's office, to wit:

To the honorable Theodore H. McCaleb, judge of the district court of the United States for the district of Louisiana:

The libel of John McLaughlin, lieutenant in the United States navy, and late commander of the United States steamer of war "Hunter," in behalf as well of the United States as of himself and the officers and men of the Hunter and other vessels of the squadron in the Gulf of Mexico, against a certain Box of Specie.

The said libellant, for and in behalf aforesaid, doth hereby propound, allege, and declare to this honorable court as followeth, to wit:

First. That pursuant to instructions for that purpose from the President of the United States, this libellant, in and with the said United States steamer of war Hunter and her officers and crew, did subdue, seize, and take upon the high seas, a certain ship or vessel called the "Jeune Nelly," and a valuable cargo and property on board the same, consisting of specie to the amount of five thousand dollars more or less, which specie the said libellant has brought into the port of New Orleans, where it now is, within the jurisdiction of this honorable court, deposited now by order of this court in the Canal Bank.

Second. That there being then and now a state of war between the United States and Mexico, the coast of Mexico on the gulf, including the harbor of Vera Cruz, had, on the sixteenth day of May last, 1846, been proclaimed by Commodore David Conner, commander of the United States squadron in the Gulf of Mexico, and in pursuance of orders to that effect issued to him by the President of the United States, to be in a state of rigid blockade, which was notified to all neutral powers, and has continued to be so blockaded constantly until this day.

Third. That the said vessel, the "Jeune Nelly," did, on or about the thirteenth day of March last, enter the port of Vera Cruz, a port in Mexico, a country then and now at war with the United States as aforesaid, which said port and city of Vera Cruz was then in a state of strict blockade by vessels of war of the United States, and that the said vessel, the Jeune Nelly, did there dispose of a cargo of contraband of war; that on or about the 20th day of March last the said vessel, the Jeune Nelly, did attempt to pass out of the said port of Vera Cruz, whereupon the said vessel, the June Nelly, was seized and captured as a lawful prize by this libellant and the officers and crew of the aforesaid United States steamer of war Hunter. That the said Jeune Nelly was afterwards wrecked while under the charge of libellant and the officers and crew of the said steamer Hunter, and the specie and property now brought within the jurisdiction of this honorable court, and deposited as aforesaid, is all that was saved from the wreck of said vessel, the Jeune Nelly.

Lastly. This libellant doth allege, propound, and declare, that all and singular the premises are and were true, public, and notorious, of which due proof having been made, he humbly prays the process and

monition of this court in his behalf to be made, and that all persons having or claiming any interest in the said box of specie, deposited by order of the court in the Canal Bank, may be cited in general and special to show cause why the said box of specie in the said bank should not be condemned and forfeited, to be distributed, as by law is provided, respecting the captures made by the public armed vessels of the United States; or, if it should appear that any part or parcel thereof ought to be restored to any person or persons as the former owners thereof, then that the remainder be so distributed.

(Signed) C. T. STEWART,
For Libellant.

(Signed) THOMAS J. DURANT,
Attorney of the United States, for the district of Louisiana.

Judge's order on the foregoing libel.

Let process [be] issued in this case as prayed for.

(Signed) THEO. H. McCALEB,
U. S. Judge.

And further, on the 12th day of April, 1847, the following admiralty warrant was issued from the clerk's office, to wit:

The President of the United States of America, to the marshal of the district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize, and into your possession take, the One Box of Specie (now in the Canal Bank, New Orleans,) now libelled by John T. McLaughlin and the United States, in the district court of the United States, for the district of Louisiana, that you do cite and admonish the owner or owners, and all and every other person or persons, having or pretending to have, any right, title, in, or to, the same, to be and appear before a district court of the United States, for the district aforesaid, to be holden at the city of New Orleans, on or before twenty days from the service hereof, to show cause, if any they have, or can, why the said box of specie should not be condemned and sold agreeably to the prayer of the libellant; and how you shall have executed this warrant that you make return according to law.

Witness the honorable Theo. H. McCaleb, judge of the said court, this twelfth day of April, 1847, and the 71st year of the independence of the United States.

[SEAL.]

(Signed) N. R. JENNINGS, *Clerk.*

Marshal's return.

Received April 12th, 1847, seized the One Box of Specie, published monition, gave notice, and in all respects complied with the law and the commands of this warrant. Returned 14th October, 1847.

(Signed) W. F. WAGNER,
U. S. Marshal.

And on the 8th day of May, 1847, the following claim was filed in the clerk's office, to wit:

To the honorable the judge of the district court of the United States, of the district of Louisiana.

The petition and claim of Baptiste Guillem respectfully shews:

That your petitioner and claimant is a native of France and a subject of the king of the French; that this petitioner and claimant had been for three years prior to the month of March, in the year 1847, a resident of the city of Vera Cruz, in the Republic of Mexico, practising the business and occupation of a cook, and by his industry and economy had accumulated a considerable sum of money.

That on learning that an attack was about to be made by sea and land on the said city of Vera Cruz, this petitioner and claimant had prepared himself to leave the said city and to embark in the British steamer which was expected to visit that city in the month of March last, and had obtained from the French consul a passport for that purpose.

That on learning that the said steamer had been wrecked on the Island of Cuba, and the American force then investing the city, had his passport changed so as to enable him to embark in the French vessel called La Jeune Nelly, then lying in the port of Vera Cruz, and did accordingly embark with his wife and children on board of said vessel on the 19th day of March last; but whether said vessel had violated the blockade of the United States, declared against the port of Vera Cruz, he does not know, and therefore neither admits nor denies.

That at the time of his embarkation on board of said vessel, this petitioner and claimant had with him, as the result of his labor and economy aforesaid, the sum of three thousand four hundred and sixty dollars, partly in gold and partly in silver; that said money was contained in three bags; that of said money six hundred dollars had been confided to him by Jean Cassalet, to be delivered to his brother in France.

That on the 20th of March, 1847, La Jeune Nelly was captured by one of the small cruisers of the U. S. squadron, and was ordered to Sacrificios; that on her way there La Jeune Nelly and the capturing vessel were both wrecked on Green Island.

That at the time of the wrecking this petitioner and claimant had two of the larger bags of money in his state room, and had on his person a bag containing ninety-seven and a half gold doubloons.

That this petitioner and claimant, and the passengers and crew of La Jeune Nelly, and also the officers and crew of the capturing vessel, were taken off the island by the boats of the United States steam vessel of war Mississippi.

That in transferring the said bags containing the money aforesaid from La Jeune Nelly to the boat aforesaid the bags which had got wet broke and burst, and the money was gathered up into two buckets.

That petitioner and claimant, in embarking himself and family on board of said boat, was obliged to wade into the water and get thoroughly

wet. That on arriving on board of the steam vessel of war Mississippi, some of the officers proposed to accommodate this petitioner and claimant with dry clothes.

That in proceeding to make this change of clothes, this petitioner and claimant placed on the table the bag containing the ninety-seven and a half doubloons which was on his person, and an officer took possession of them. That the said money and gold brought on board of the steamer Mississippi was counted by the American officers, in presence of an officer of the French brig of war Mercuré, and a written memorandum, which will be produced when required, was delivered to said French officer, who delivered it to your petitioner and claimant.

That after remaining a short time on board of the Mississippi, this petitioner and claimant was sent on board of the French vessel of war, from whence, after the surrender of the city of Vera Cruz, this petitioner and claimant returned to the said city, and by the favor of the commanding officer of said city obtained a free passage to the city of New Orleans, where your petitioner arrived on or about the 5th day of May, 1847, in the transport ship Columbia.

And your petitioner and claimant shows that petitioner's money as aforesaid is contained in a box which has been brought to New Orleans, and has been libelled by Lieut. John McLaughlin, of the U. S. navy, on behalf of himself and the officers and men of the blockading squadron off Vera Cruz, and also by the United States.

This petitioner and claimant alleges and avers, and so the truth is, that the whole of the said sum of three thousand four hundred and sixty dollars, with the exception of the said sum of six hundred dollars, was the individual and private property of this peittioner and claimant, and that the said six hundred dollars was the property of the said Jean Cassalet, and was confided to this petitioner and claimant for the purpose of being delivered to his brother as aforesaid in France.

And this petitioner and claimant avers that no part of the said sums of money was the return cargo of the said La Jeune Nelly, or belonged to the owners of the said vessel, but was wholly and solely the property of your petitioner, in the manner aforesaid.

And this petitioner and claimant avers, that in embarking on board the said vessel, La Jeune Nelly, he considered that he was acting in conformity with the orders and permission of the American commander-in-chief, by whom the said permission to embark as aforesaid was extended to the 22d March, 1847. And this petitioner and claimant further avers that, embarking on board the said vessel, La Jeune Nelly, with his property aforesaid, he had no wish, intention, or knowledge that he was violating the blockade of the port of Vera Cruz by the United States squadron, or that he was in any manner acting contrary to the commands or orders which the commanding officer of the said squadron or the Government of the United States had a right to make, or had made, in the prosecution of the war made by them against the Republic of Mexico.

And this petitioner and claimant does not know whether any part of

the money in the two bags taken from his state room on board of La Jeune Nelly was or was not lost by the bursting of the bags as aforesaid, but that he well knows that the ninety-seven and a half doubloons, taken from his person as aforesaid, were all received by the American officer.

That this petitioner and claimant claims to be paid the whole sum of three thousand four hundred and sixty dollars, or at least the said ninety-seven and a half doubloons, and such part and portion of the money contained in the said two bags as was received on board the said ship Mississippi, and brought to the city of New orleans; and this petitioner and claimant prays for all relief adapted to the nature of the case.

(Signed) C. WATTS,
H. R. DENIS,
Proctors for petitioner and claimant.

Baptiste Guillem, being duly sworn, doth depose and say, that all the matters alleged in the said claim are true and correct within his personal knowledge.

(Signed) BTE. GUILLEM.

Subscribed and sworn this 8th day of May, 1847, before me.

(Signed) C. B. BEVERLEY, *Justice.*

And on the 12th day of May, 1847, the following claim was filed in the clerk's office, to wit:

UNITED STATES and John McLaughlin et als.
vs.
ONE BOX OF SPECIE.

To the honorable the district court of the United States for the district court of Louisiana, in admiralty sitting.

And now comes into court Jean Cassalet, who is a native of Lasurn, in the kingdom of France, and a subject of the King of the French, and claims as his own property a certain sum of money in specie, herein seized by Thomas J. Durant, district attorney for the United States, and for the same appearing, as also for John McLaughlin and others of the U. S. navy, and libelled and propounded against as forfeited in and by the libel of information aforesaid, to wit:

The sum of six hundred dollars, which is contained in, and forms a part of, the Box of Specie, herein as above libelled and propounded against; and the said Jean Cassalet alleges, that at the time of the seizure aforesaid he was, and yet is, the true, sole, and lawful owner and proprietor, bona fide, of the said six hundred dollars in specie, and of this he is ready to make due proof, by his own oath [or] otherwise, as the said court shall direct.

And the said claimant further says, that, by color of the seizure aforesaid, he is unjustly and grievously vexed; nevertheless, for plea and answer to the several counts and allegations in said libel contained, and in order to entitle himself to a restitution of the specie aforesaid, says further:

That this claimant had for some time, before the month of March, in the year 1847, been a resident of the city of Vera Cruz, of the Republic of Mexico, and then engaged in the capacity and occupation of waiter in a hotel; that, by his industry and economy, your claimant had accumulated the sum of six hundred dollars, in the month of March, 1847; that Baptiste Guillem being about to depart for France with his family, in the vessel called La Jeune Nelly, this claimant entrusted to him the sum of $600, to be by him, the said Baptiste Guillem, delivered over to the brother of this claimant in France. That, for the other facts necessary to the elucidation of the claim of this claimant, he refers to the claim and petition of the said Baptiste Guillem, now already filed herein. That in like manner his said claim *is* therein set forth, *as* contained in the Box of Specie libelled herein, is this claimant's claim for $600 set forth and described. That the said Box of Specie, herein libelled, has been thus libelled on the ground that the *sum* was a part of the cargo of La Jeune Nelly, which, [as] is alleged, had violated the blockade.

This claimant further avers, that, whether said vessel, called La Jeune Nelly had violated the blockade or not, he does not know; he neither admits nor denies the same, and has no interest therein. Wherefore this claimant, the said Jean Cassalet, claims the said six hundred dollars in specie as his property, and prays that the same may be restored to him accordingly, and that he may have his costs in this matter sustained, and his damages, occasioned by the seizure and detention of said $600, so unlawfully made, to him decreed; and for such other and further relief as he of right may receive, and your honor shall be pleased to decree.

(Signed) C. WATTS,
(Signed) H. R. DENIS,
Proctors for claimant.

UNITED STATES OF AMERICA,
State of Louisiana, city of New Orleans:

Jean Cassalet being duly sworn, doth depose and say, that all the matters stated in the above claim and answer are correct and true; and that all the matters stated in the claim and petition of Baptiste Guillem, this deponent believes to be true.

(Signed) JEAN CASSALET.

Subscribed and sworn this 11th day of May, in the year one thousand eight hundred and forty-seven.

(Signed) C. B. BEVERLEY, *Justice.*

And on the 7th day of June, 1847, the following judgment was entered on the minutes, to wit:

MONDAY, *June 7th, A. D.* 1847.

Present: Hon. Theo. H. McCaleb.

JOHN T. McLAUGHLIN and the United States,
vs.
ONE BOX OF SPECIE. } 6374.

On motion of Thomas J. Durant, United States attorney, and on informing the court that only a part of the specie seized in this case, to wit, the sum of three thousand four hundred and sixty dollars, is claimed, and that no claim has been made to the surplus, to wit, the sum of four hundred and eighteen and $\frac{25}{100}$ dollars, and that the monition issued in this case has been duly published, and the time for claiming the said sum has elapsed, it is ordered, adjudged, and decreed that the sum of four hundred and eighteen and $\frac{25}{100}$ dollars, being the amount unclaimed, be condemned as good and lawful prize to the captors thereof.

And further, on the 7th day of June, 1847, the following entry was made on the minutes, to wit:

MONDAY, *June 7th, A. D.* 1847.

Present: The Hon. Theo. H. McCaleb.

JOHN McLAUGHLIN and the United States,
vs.
ONE BOX OF SPECIE.

On motion of Thomas J. Durant, attorney of the United States, it is ordered that the prize commissioner be directed to remove the seals upon the said Box of Specie, now deposited in the New Orleans Canal Bank, in order that the U. S. marshal may be able to count the specie contained in the said box, so that the amount to which no claim has been made may be ascertained.

And on the 10th day of June, 1847, the following order was issued from the clerk's office, directed to the U. S. marshal, and is as follows:

United States district court for the district of Louisiana.

MONDAY, *June 7th, A. D.* 1847.

Present: Hon. Theo. H. McCaleb.

JOHN McLAUGHLIN and the United States,
vs.
ONE BOX OF SPECIE.

On motion of Thomas J. Durant, attorney of the United States, it is ordered that the prize commissioner be directed to remove the seals upon the said Box of Specie, now deposited in the New Orleans Canal Bank, in order that the U. S. marshal may be able to count the specie therein contained, so that the amount to which no claim has been made may be ascertained.

Clerk's office, June 10th, 1847.—A true extract from the minutes.

(Signed) N. R. JENNINGS, [SEAL.]
Clerk.

Marshal's return on the foregoing order.

Received June 10th, 1847. The register having removed the seals, I proceeded to count the money mentioned in this order, and found the same to amount to three thousand eight hundred and seventy-eight $^{30}_{100}$ dollars, $3,878 30, and I found among the money a fork, supposed to be silver.

12th June, 1847.

(Signed) W. F. WAGNER,
U. S. Marshal.

And on the 28th day of June, 1847, the following depositions, taken before N. R. Jennings, prize commissioner, were offered in evidence, to wit:

JUNE 9th, 1847.

JOHN T. MCLAUGHLIN and als., and the United States,
vs.
ONE BOX OF SPECIE.

According to notices duly issued and returned, addressed to the district attorney of the United States and to C. T. Stewart, on behalf of the captors, the district attorney representing the United States, Dennis and Spring, esqrs., of counsel for the claimants, appeared before me, the prize commissioner, to take the testimony of certain witnesses in the above entitled cause, to be used on the trial thereof, conditioned however that the court decide this to be a case for further proof; whereupon I proceeded to swear the witnesses introduced by the counsel for the claimants.

John Cassalet, or Jean Cassalet, being duly sworn, states, that lately he was an inhabitant of Vera Cruz; that he has known, in Vera Cruz, Baptiste Guillem; for three years past he has known him in Vera Cruz; he was a cook by trade; he was employed as such in the largest boarding establishment in Vera Cruz; he embarked from Vera Cruz on the 19th of March last, on board the Jeune Nelly, a French vessel from Havre; he had with him on board his wife and his children. States that, to his knowledge, the said Guillem embarked on board said vessel three thousand four hundred and sixty dollars in gold and silver, out of which there was six hundred dollars in gold delivered by the witness to the said Guillem, to be delivered by him (Guillem) to the brother of witness, in Bordeaux.

States that in the evening the steamer of the United States stopt the Jeune Nelly; night coming on, witness could see nothing else; the next morning they saw the vessel and the sloop of the United States wrecked. Witness being shown document marked A, states that he recognises the signature thereto of A. Buzzelt, as being the handwriting of said Buzzelt.

Cross examined by the district attorney.

States that he is a Frenchman by birth, from the department of the Lower Pyrenees. Witness speaks Spanish. He resided in Mexico for nearly five years; next September will make it five years since he resided in Mexico; has resided all that time in Vera Cruz; he was a barkeeper at that place. Witness is an unmarried man. Knew Guillem, the claimant, at Vera Cruz. Guillem was a cook, and had resided at Vera Cruz three years. Guillem is a Frenchman. He was not naturalized in Mexico. States that, to his knowledge, the Jeune Nelly came into the port of Vera Cruz on the 12th of March last, or thereabout. Says that he does not know how the Jeune Nelly got into the port of Vera Cruz; the said port was blockaded at the time, and every one was very much astonished that she got in. Says that she came in in the day time in clear weather, and everybody supposed that the American squadron must have permitted her to come in. He says that he himself saw her come in with the French flag flying. It was the first time that that vessel had been to Vera Cruz during the blockade. The vessel left the port of Vera Cruz on the 20th of March. Witness saw her go out. She went out about 5, or ½ past 5, o'clock in the afternoon. The Jeune Nelly was a good sailer. She displayed the French flag when leaving the harbor of Vera Cruz; a number of vessels came in at the same time with American troops on board. The Jeune Nelly went out in ballast. Witness is the same person who has made a claim in this seizure for six hundred dollars.

(Signed) JEAN CASSALET.

Baptiste Guillem being duly sworn states, that he has lived in Vera Cruz for about three years. That he knows Jean Cassalet, who is a Frenchman by birth. The day before witness departed from Vera Cruz, Jean Cassalet had deposited in his hands six hundred dollars in gold to be delivered to his brother at Bordeaux, in France. These six hundred dollars were placed in a bag of silver belonging to witness on board the Jeune Nelly.

Witness states that on the 20th of March the Jeune Nelly was stopt by the American cruiser, and she was ordered to Sacrificios, accompanied by a schooner and a small steamer belonging to the United States; in the night all three were wrecked; in the morning the boats of the steamer Mississippi came to their assistance; the bags of money were put into buckets, and transported on board the Mississippi; the owners were called to recognise their property; and witness was told by the officers on board not to be uneasy, that the money would be returned to them.

Cross examined by the district attorney.

Witness saw the Jeune Nelly come into the port of Vera Cruz. It was on the 12th or 13th of March. Witness being asked how the vessel came into the port of Vera Cruz, knowing that it was blockaded, answers, that the captain told him that he knew the port was blockaded, but having a small cargo he came in. States that the American troops

were landed two or three days before the Jeune Nelly came into Vera Cruz. The Jeune Nelly came into the port in the day time. Deponent left Vera Cruz before the city was taken. At the time the Jeune Nelly struck on the rock there was a pilot on board the schooner. There were but three vessels in company, the Jeune Nelly, the small steamer, and the schooner. Thinks they all struck about the same time; probably the steamer first.

Examination in chief resumed.

Witness does not know that on the day he left Vera Cruz any more American troops arrived; he being busy in his own affairs, did not observe that the American troops had disembarked two or three days before the vessel Jeune Nelly entered the port of Vera Cruz. Witness cannot say that any more American troops arrived at Vera Cruz after the 13th of March, but he is certain that some troops were landed after the Jeune Nelly arrived in the port.

(Signed) BTE. GUILLEM.

I, N. R. Jennings, duly appointed commissioner in prize for the State of Louisiana, do certify, that on the ninth day of June, A. D. 1847, I was attended by the two witnesses, Baptiste Guillem and Jean Cassalet, and the said witnesses being duly sworn by me *did* answer the truth, the whole truth, and nothing but the truth, to the questions that should be propounded by the counsel of the respective parties, did make the foregoing answers, as by me reduced to writing in their presence; which said testimony being read over to them by me, was signed in my presence by each of said witnesses respectively.

In witness whereof I hereunto set my hand and seal, this 9th day of June, 1847.

(Signed) N. R. JENNINGS,
Prize Commissioner.

And further, on the 28th day of June, 1847, the testimony of Geo. T. Maulshy, taken by N. R. Jennings, prize commissioner, was offered in evidence, to wit:

JOHN T. MCLAUGHLIN
vs.
A BOX OF SPECIE.

George Maulsby being sworn deposes and says, he is a passed assistant surgeon in the Navy, and was attached to the United States brig Porpoise at the time of the capture of the French bark called "La Jeune Nelly." That the said brig Porpoise was at that time one of the vessels maintaining the blockade of the port of Vera Cruz. That the steam schooner Hunter was inside of the said brig Porpoise, and made prize of the said French bark on coming out of the harbor of the said port of Vera Cruz. That the commanding officer of the said brig Porpoise thereupon sent an officer on board of the said bark for the purpose of taking her down to the commander of the United States squadron. This

occurred on or about the day of March last; and the said bark proceeded down to the Commodore, and in company with the steamer Hunter, and was afterwards wrecked. The blockade of the said port of Vera Cruz had been in force from the month of , eighteen hundred and forty-six; and, although deponent did not see the said bark run the blockade, he knows that the said French bark was not in the said port of Vera Cruz three weeks, more or less, before the period of the capture of said bark; and further knows that it was publicly proclaimed and stated, that the said French bark had violated the blockade some two weeks before, by running into the said port of Vera Cruz in defiance of the said blockading squadron.

Deponent further states, that he knows nothing of any papers or documents belonging to said vessel.

(Signed) GEO. MAULSHY.

Sworn to and subscribed before me, this 26th of June, 1847.

(Signed) N. R. JENNINGS,
Prize Commissioner.

And further, on the 28th day of June, 1847, the testimony of John T. McLaughlin, taken by N. R. Jennings, prize commissioner, was filed and offered in evidence, and is as follows:

John T. McLaughlin being by me duly sworn declares, that he is the prize master of a box said to contain specie taken from the barque Jeune Nelly, as specially set forth in his affidavit already made; that he has delivered to N. R. Jennings, the prize commissioner, all the documents and papers in his possession, or within his knowledge, relating to the barque Jeune Nelly, or her cargo, without any fraud, subductions, or embezzlement; said documents or papers being eight in number, and marked by the said commissioner 1, 2, 3, 4, 5, 6, 7, 8; said documents were delivered or handed to the said deponent by the captain of the said barque Jeune Nelly, as being the documents and papers relative to the said barque and her cargo, which were on board of said barque at the time she was captured.

And this deponent further swears, that if at any time hereafter, and before the final condemnation or acquittal of said property, any further or other papers relating to said captured property shall be found or discovered to the knowledge of this deponent, they shall also be delivered up, or information thereof given to the said commissioner, or the court aforesaid.

(Signed) JOHN T. McLAUGHLIN.

Sworn to and subscribed before me, this 10th day of April, A. D. 1847.

(Signed) N. R. JENNINGS,
Prize Commissioner.

And further, on the 28th day of June, 1847, the testimony of John T. McLaughlin, taken by N. R. Jennings, prize commissioner, was filed and offered in evidence, and is as follows:

In the matter of McLaughlin and the United States vs. A Box of Specie, taken as prize.

John McLaughlin being by me duly sworn deposes and says, that the specie said to be contained in the box specified in his information addressed to this honorable court, was, to the best of his knowledge and belief, taken in the cabin of the United States steamer Mississippi, from the persons of the people found on board the French barque Jeune Nelly at the time of her capture, and immediately after their rescue from the wreck of said barque; and that said specie was part and parcel of the property of said barque.

Deponent further testifies that said barque Jeune Nelly was captured on or about the 20th March, 1847, whilst attempting to pass the blockading force before the port of Vera Cruz, by the U. S. steamer Hunter, under the command of deponent, who is a lieutenant in the Navy of the United States. The said barque, at the time of her capture, was under the French national flag, and had been reported to deponent by the boarding officer from the blockading vessel as a vessel that had run the blockade before Vera Cruz a few days prior to the date of her capture. In consequence of this information, deponent, as commander of a national ship, and in the discharge of the duties of his office, seized and took possession of said barque Jeune Nelly, so soon as she again attempted to pass the blockade. The said barque Jeune Nelly was lost on the day of her seizure, together with the capturing vessel, whilst attempting to enter the harbor of Vera Cruz, and deponent is now here with the specie above referred to, and all the papers taken in said barque, under orders from Commodore Perry, commander-in-chief of the naval forces on the home station and in the Gulf of Mexico, to deliver them here for adjudication.

(Signed) JOHN T. McLAUGHLIN.

Sworn to and subscribed before me, this 10th day of April, 1847.

(Signed) N. R. JENNINGS, *Prize Com'r.*

Document attached to said deposition.

Money belonging to captain	- -	$816 31
" " Mr. Baptiste	- -	2,707 25
Original?		$3,523 56

And further, on the 28th day of June, 1847, the following inventory of papers captured in the French bargue, Jeune Nelly, was filed and offered in evidence, and is as follows:

Inventory of papers captured in the French barque, Jeune Nelly, before the port of Vera Cruz, by the U. S. steamer Hunter, Lieut. Commanding John T. McLaughlin, transferred this 10th day of April, 1847, to N. R. Jennings, esq., prize commissioner, &c., for the district of Louisiana:

Marked—1, two log books; 2, one journal de mer; 3, one register;

4, one crew list; 5, one licence, (for one year;) 6, one inventory of furniture; 7, one policy of insurance on barque made in Havre for 30,000 francs; 8, sundry passports, and loose letters and papers, referring to the transactions of the vessel.

(Signed) JOHN T. McLAUGHLIN,
Lieut. commanding.

And further, on the 28th June, 1847, the passport of Cassalet was filed and offered in evidence, to wit:

Consulat de France à la Vera Cruz.

Passe Port No. 265.

Signalement.

Age, 28 ans.
Taille, 1 mètre 70 cent.
Cheveux, noirs.
Sourcils, idem.
Yeux, chatains.
Front, moyen.
Nez, ordinaire.
Bouche, moyenne.
Menton, rond.
Visage, ovale.
Signes particuliers.
Signature du Porteur.
(Signed) CAZALET.

Solvit 10 f., 50, art. 46 du tarif.

Au nom du Roi.

Nous, consul de France à la Vera Cruz, Priant M. M. les officiers civil et militaires de laisser passer librement le Sieur Cazalet (Jean) cuisinier né à Lescure (Basses Pyrenées) demeurant à Vera Cruz allant à la Neuvelle Orleans et de là en France, et de lui donner aide et protection en cas de besoin.

Le présent passe port, valable pour un an, a été delivré le vu du son immatriculation du Régistre du Consulat.

Fait à Vera Cruz le 5 Avril 1847.

Par M. L. CONSUL, *Le Consul.*

(Signed) R. GLAUX, [SEAL.]

Le Chancellier:

(Signed) J. E. CAPDEVIELLE.

And further, on the 28th day of June, 1847, the document marked A was offered in evidence, which document is as follows:

Je, soussigné, déclare avoir remis au Sieur Baptiste Guillem la somme de trois mille piasters fortes et en or la veille de son départ pour France sur le navire Jeune Nelly, somme qu'il avait mise en dépot chez moi. En foi de quoi.

(Signed) AS. BUZZELTI,
BOUGONIS,
JEAN CAZALET.

VERA CRUZ, 29 *Mars*, 1847.

Je, soussigné, déclare avoir remis à Monsieur Baptiste Guillhem la somme de six cents piastres en or pour remettre à mon frère à Bordeaux la veille de son départ sur la Jeune Nelly. En foi de quoi

(Signed) JEAN CASALET,
H. HAAS.

VERA CRUZ, 29 *Mars*, 1847.

Le Consul de France, à Vera Cruz, certifie à que de droit la nationalité française du Sr. Jean Baptiste Guillhem et déclare, en outre, avois un parfaite connoissance des faits ci dessus attestés. Vera Cruz le 30 Mars, 1847.

(Signed) R. GLOUX. [SEAL.]

And further, on the 28th day of June, 1847, the report of the prize commissioner was filed and offered in evidence, and is as follows:

UNITED STATES DISTRICT COURT, *district of Louisiana, ss:*

To the honorable Theo. H. McCaleb, judge of the district court of the United States for the district of Louisiana.

The undersigned prize commissioner respectfully reports, that, according to the order to him on the 10th of April 1847, he received from John T. McLaughlin, esq., prize master, a certain box covered with canvass, said to contain specie, and having affixed the seals on said box as required by the prize rules, I deposited the same in the Canal Bank of this city.

I then received from the said McLaughlin all the papers and documents said to belong to the vessel captured called the "Jeune Nelly, which said papers being in a very wet condition, I cause the same to be dried as well as possible, and marked them accordingly, all of which is respectfully submitted.

(Signed) N. R. JENNINGS, *Prize commissioner.*

And further, on the 28th day of June, 1847, the following entry was made on the minutes, to wit:

Monday, June 28th, A. D. 1847.

Present: Hon. Theo. H. McCaleb.

JOHN T. McLAUGHLIN et al.
vs.
ONE BOX OF SPECIE. } 6374.

This case was this day called; Thomas J. Durant, esq., for the United States, and John T. McLaughlin, H. R. Denis, C. Watts, and Spring for the claimants, appeared.

The trial was had upon the claims filed by J. B. Guillem and Jean Cassalet; the document and affidavits received by the prize commissioner were then offered in evidence, and argument of counsel heard, when the court took the matter under consideration.

And on the 7th day of July, 1847, the following judgment was entered on the minutes, to wit:

The court having taken under consideration the claims of Baptiste Guillem and Jean Cassalet, made to a certain portion of the specie seized in the above entitled case, did this day, for reasons given in open court, and based upon the decision made in the suit of Henry Rogers et als. vs. the Schooner Amado and cargo, now on file in this case for reference, deliver its judgment thereon in the words and figures following, to wit:

It is ordered, adjudged, and decreed, that the claims filed by the said Baptiste Guillem and Jean Cassalet be dismissed, and that the amount of specie claimed by them, "to wit," the sum of three thousand four hundred and sixty dollars, be condemned as good and lawful prize to the captors thereof.

It is further ordered that the register *draw* out a formal decree accordingly.

"Reasons for judgment in the case of Henry Rogers et als. vs. the Schooner Amado and cargo, filed and referred to."

HENRY ROGERS AND ALS., AND THE UNITED STATES,
vs.
THE MEXICAN SCHOONER AMADO AND HER CARGO.

United States district court sitting as a court of prize.

"This vessel was taken by the fleet under the command of Commodore Perry at Frontera de Tabasco in the month of November last, and sent to this port for condemnation. The libel states, "that pursuant to instructions, for that purpose, from the President of the United States, and pursuant to instructions to that effect from Matthew C. Perry, esq., commander of the United States steamship of war Mississippi, the libellant, Henry Rogers, with a cutter and crew belonging to the said steamship of war, did, on the day of November, 1846, enter the river Tabasco, within the territory of the Republic of Mexico, and then and there seize and take the said Mexican Schooner Amado, with all her apparel, tackle, furniture, and cargo, consisting of cocoa, sugar, and other goods, wares, and merchandise, found lying in the said river Tabasco; that at the date of capture the said schooner and her cargo were the property of citizens and residents of the Republic of Mexico, and enemies of the United States."

For the reasons here alleged a decree of forfeiture is demanded on behalf of the captors and the United States.

A claim and answer has been filed in behalf of one Jean Baptiste Capdepon by A. Capdevielle, acting as his agent. In this it is alleged that the claimant is an alien, absent from the State, but is the sole owner of the schooner and cargo; that he is a French citizen, and has been for some time past engaged in trade in the Republic of Mexico, under the protection of the treaties entered into by the said republic with the French government. It is further alleged, that in order to avail himself, in the pursuit of his trade, of the advantages and facilities to be derived from transportation in Mexican bottoms, the claimant purchased the schooner and sailed in her under Mexican colors.

That, since the commencement of the war between the United States and Mexico, he ventured the said schooner, and the goods on board of her, under Mexican colors, with the express permission of the American consul, from Terra de Tabasco, and with the implied, as well as express, assent of the chief officers of the American squadron at Vera Cruz, who gave him a written protection in return for the good services which he had the fortune to render them. He, therefore, contends that his property should be regarded neutral, and as such not liable to confiscation.

The deposition of Benito Bosch, (the master of the vessel,) in answer to the standing interrogatories, shows that Capedebon, the owner of the

vessel, is a Frenchman by birth, and has lived in Tabasco for thirteen years; that he does business in Tabasco, and that the goods on board were for his account and risk.

The witness also declares, that the schooner sailed under Mexican colors, and had no other colors on board. We have thus the unequivocal declaration of both the claimant and the master that the national character of the vessel was Mexican; nor is this character destroyed by the alleged permission of the American consul, at Terra de Tabasco, to assume the flag of the enemy, nor by the permission of Captain Gregory, of the frigate Raritan, bearing date "off Vera Cruz, 2d June, 1846," authorizing this schooner to pass from Vera Cruz to Guascalco, Tabasco, and to return. Neither the American consul nor the commander of the American frigate had any authority, by virtue of their official stations, to grant any license or permit which would have the legal effect of exempting the vessel of an enemy from capture and confiscation.

"To exempt the property of enemies from the effect of hostilities (says Sir Wm. Scott, in the case of the Hope,) is a very high act of sovereign authority; if at any time delegated to persons in a subordinate station, it must be exercised either by those who have a special commission granted to them for the particular business, and who, in legal language, are termed mandatories, or by persons in whom such a power is vested in virtue of any official station to which it may be considered incidental. It is quite clear that no consul in any country, particularly in an enemy's country, is vested with any such power in virtue of his station. 'Ei rei non proponitur,' and, therefore, his acts relating to it are not binding. Neither does the admiral, on any station, possess such authority. He has indirect power relative to the ships under his immediate command, and can restrain them from committing acts of hostility, but he cannot go beyond that; he cannot grant a safeguard of this kind beyond the limits of his own station.

"The protections, therefore, which have been set up, do not result from any power incidental to the situation of the persons by whom they were granted; and it is not pretended that any such power was specially entrusted to them for the particular occasion. If the instruments which have been relied upon by the claimants are to be considered the naked acts of these persons, then are they in every point of view totally invalid." (The Hope vs. Dodson.)

It is, however, due both to the American consul and the commander of the frigate Raritan to say, that an inspection of the documents relied on as permits or licenses, were evidently never intended to have the force and effect claimed for them by the proctor of the claimant. The one signed by the consul, and bearing date at Frontera de Tabasco, 22d July, 1846, is merely a recommendation of Capedebon to the favorable consideration of the officers of the American squadron, on account of his having, on many occasions, rendered friendly advice and pecuniary assistance to American citizens at a time when there was no American consul at the port of Tabasco. This letter of recommendation, for it is nothing else, concludes thus: "I have known Mr. Capedebon for

many years, and my long acquaintance with him has caused me to form so favorable an opinion of him, together with the fact of his being a subject of our oldest and firmest friend and ally, France, that I am emboldened to hope, and even to ask, that, in case his vessel should be taken by any of you, gentlemen, you will, if your duty will permit it, suffer him to continue his voyage with his vessel and cargo, as he assures me he has nothing contraband of war on board of his vessel, her cargo consisting of the productions of this department—principally cocoa."

If there be anything in this communication to entitle the claimant to the equitable consideration of our Government, it is to *be* [the] executive or legislative department that this application must be made. Sitting as a court of prize, this tribunal can only be governed by the principles of the laws of war, and will look only to the legal effect of the evidence adduced. The permit from the commander of the frigate Raritan, relied on by the claimant, is dated "Off Vera Cruz, 2d June, 1846," and is as follows: "The Mexican schooner Amado has permission to pass from Vera Cruz to Guascualco, Tabasco, with five persons composing her crew, and a family of passengers with their effects; and the said schooner has permission to return."

Let us suppose, for the sake of argument, that the legal effect of this permit would have been to exempt the vessel from liability to capture on the particular voyage she was then prosecuting; it would yet be most unreasonable to extend the privilege conferred by the very terms of the document itself.

It was intended as an authority to the schooner to proceed from Vera Cruz to Tabasco, and to return to the former port; and yet I am called upon to give it a construction which would destroy the rights of captors, acquired by a seizure of the vessel and cargo within the territory of the enemy, six months after it was granted, and when, I am bound to suppose, the particular voyage for which it was granted had long been performed. The deposition of the master showed that the schooner had on board a national passport—"that is, a passport from the Mexican Government. It is a well settled principle of law of prize, that sailing under the flag and pass of an enemy is one of the modes by which a hostile character may be affixed to property; for if a neutral vessel enjoys the privileges of a foreign character, she must expect, at the same time, to be subject to the inconveniences attaching to that character." The rule is necessary to prevent the fraudulent mask of enemy's property. "The existence and employment of such a license," says Mr. Justice Story, in delivering the opinion of [the] Supreme Court of the United States, in the case of the Julia, (8 Cranch, 199,) "affords strong presumption of concealed enemy interest, or, at least, of ultimate destination for enemy's use. It is inconceivable that any government should allow its protection to an enemy trade merely out of favor to a neutral nation, or to an ally, or to its enemy. Its own particular and special interests will govern its policy; and the quid pro quo must materially enter into every such relaxation of belligerent rights. It is, therefore, a fair inference, either that

its subjects partake of the trade under cover, or that the property, or some portion of the profits, finds its way into the channel of the public interests."

In the case of the Saunders (2 Gallison, 214) the same eminent admiralty judge decided, that, by the general law of prize, as long as a vessel retains the hostile character consequent upon the use of an enemy's license, it is subject to all the penalties of such character; and, if captured in delicto, the vessel is confiscatable jure belli.

In the case of the Ariarden, (2 Wheaton, 143,) the Supreme Court of the United States held, that sailing under the enemy's license constituted of itself an act of illegality, which subjects the property to confiscation, without regard to the object of the voyage or the port of destination.

A distinction is made in the cases decided in the High Court of Admiralty in England between the ship and cargo. Some countries have gone so far as to make the flag and pass of the ship conclusive on the cargo also. It is true that the decision of Sir William Scott, in the case of the Elizabeth, (5 Robinson, Ad. Rep. 2,) does not carry the principle to that extent, as to cargoes laden before the war.

The rule laid down by that distinguished judge was, to hold the ship bound by the character imposed upon it by the authority of the government from which the documents issue. Goods which had no such dependence upon the authority of the State might be differently considered; and if the cargo be laden in time of peace, though documented as foreign property in the same manner as the ship, the sailing under the foreign flag and pass was not held conclusive as to the cargo.

But let us suppose that the cargo, as in this case, were laden in time of war, and there is no reason to suppose that the rule of the English courts would have varied from that which has been recognised by the admiralty tribunals in this country. "The doctrine of the American courts," says Chancellor Kent, in his Commentaries on the Law of Nations, (lecture IV, 85,) "has been very strict on this point, and it has been frequently decided that sailing under the license and passport of protection of the enemy, in furtherance of his views and interests, was, without regard to the object of the voyage or the port of destination, such an act of illegality as subjected both ship and cargo to confiscation as prize of war."

But the proctor of the claimant has contended that his client is a subject of the French Government, and as such is entitled to all the rights of a neutral. This position cannot be maintained. For all the purposes of argument, it may safely be admitted that the claimant is still a subject of France, or, in other words, that he has never become a naturalized citizen of the Republic of Mexico.

But, from the examination in preparation, it plainly appears that he has resided in Mexico for thirteen years; and there is no principle of prize law better settled than that the property of a person settled in the enemy's country, although he be a neutral subject, is affected with the hostile character, (the Ann Green and cargo, 1 Gallison, 284.) It is

equally well settled that the property of a person may acquire a hostile character although his residence be neutral. Therefore, where a person is engaged in the ordinary or extraordinary commerce of an enemy's country upon the same footing and with the same advantages as native resident subjects, his property employed in such trade is deemed incorporated into the general commerce of that country and subject to confiscation, be his residence where it may. And it was held by Mr. Justice Story, in the case of the San José Indianno, (2 Gallison, 268,) that if there be a house of trade established in the enemy's country, and habitually and continually carrying on its trade with all the advantages and protection of subjects of the enemy, a shipment by such house, on its own account, though one of the parties be resident in a neutral country, is purely of the *ennemy* character, and the share of such partner in the property is not to be excepted from this thorough incorporation into the enemy's character. Mr. Wheaton, in his work on captures, (chap. IV, 104,) says, that the property of persons domiciled in the enemy's country is liable to capture and condemnation, although such persons may be citizens or subjects of the belligerent State of neutral powers; and that a person who resides under the protection of a hostile country, for all commercial purposes, is to be considered, to all civil purposes, as much an enemy as if he were born there. In the case of Murray vs. the Charming Betsey, (1 Cranch, 65,) the Supreme Court of the United States decided, that a citizen residing in a foreign country might acquire the commercial privileges attached to his domicil, and thus be exempt from the operation of a law of his original country restraining commerce with another foreign country. As the person who has a commercial inhabitancy in the hostile country has the benefits of his situation, so also he must take its disadvantages. Qui commodum sentit, sentire debet et onus, is the maxim of the civil law. (Wheaton on Captures, 102.)

"It becomes important, in a maritime war," says Chancellor Kent, (lecture IV,) "to determine, with precision, what relations and circumstances will impress a hostile character upon persons and property; and the modern international law of the commercial world is replete with refined and complicated distinctions on this subject. It is settled that there may be a hostile character merely as to commercial purposes, and hostility may attach only to the person as a temporary enemy, or it may attach only to property of a particular description. This hostile character, in a commercial view, or one limited to certain intents and purposes only, will attach in consequence of having possession in the territory of the enemy, or by maintaining a commercial establishment there, or by a personal residence, or by particular modes of traffic, or by sailing under the enemy's flag or passport." And again, he says: "If a person has a settlement in a hostile country by the maintenance of a commercial establishment there, he will be considered a hostile character and a subject of the enemy's country in regard to his commercial transactions connected with that establishment." The position is a clear one, that if a person goes into a foreign country and engages in trade there, he

is, by the law of nations, to be considered a merchant of that country, and a subject to all civil purposes, whatever that country be, hostile or neutral; and he cannot be permitted to retain the privileges of a neutral character during his residence and occupation in an enemy's country. He takes the advantages and disadvantages, whatever they may be, of the country of his residence. This doctrine is founded on the principles of national law, and it accords with the reason and practice of all civilized nations. Megrans jura amistad privilegia, et emmunitates domicilii prioris, (2 vol., 41, Poet comm. ad Pand., tom 1, 347.) According to Grotius, (de J. B. ac p. 563,) all the citizens or subjects of the enemy who are such from a permanent cause, that is to say, settled in the country, are liable to the law of reprisals, whether they be natives or foreigners; but not so if they are only travelling or sojourning for a short time. And according to Molloy, (de J. M., B. 1, C. 2, XVI,) it is not the place of any man's nativity, but of his domicil; not of his origination, but of his habitation, that subjects him to reprise. The law does not consider so much where he was born as where he lives; not so much where he came into the world as where he improves the world.

In the judgment of the Lords of Appeal in prize causes, upon the cases arising out of the capture of St. Eustatius by Admiral Rodney, delivered, in 1785, by Lord Camden, he stated, that if a man went into a foreign country upon a visit to travel for health, to settle a particular business, or the like, he thought it would be hard to seize upon his goods; but a residence not attended with these circumstances ought to be considered as a permanent residence.

In applying the law and evidence to the resident foreigners in St. Eustatius, he said that, in every point of view, they ought to be considered resident subjects. Their persons, their lives, their industry, were employed for the benefit of the State under whose protection they lived; and if war broke out, they continuing to reside there, paid their proportion of taxes, imports, and the like, equally with natural born subjects, and no doubt came within that description. (Wheat. Int. Law, 370.) It has been a question, admitting of much discussion and difficulty arising from the complicated character of commercial speculations, what state of facts constitutes a residence, so as to change or fix the commercial character of the party. "Time," says Sir Wm. Scott, in the case of the Harmony, (2 Rob. ad. Rep. 324,) "is the grand ingredient in constituting domicil." In most cases it is unavoidably conclusive; and, in that case, that eminent Curtian decided that four years were sufficient to fix the domicil of the party.

"The animus manendi" is the point to be settled; and, in the case of the Bernon (1 Rob. ad. Rep. 86,) it was held that the presumption arisen from actual residence in any place is, that the party is there animo manendi, and it lies upon him to remove the presumption if it should be requisite for his safety.

From the authorities here cited it is clear that I am not called upon to take into consideration the citizenship of the claimant in deciding

the point which has been urged with so much zeal by his proctor. *It is* long residence of 13 years in the enemy's country is amply sufficient to invest him *to* all the disadvantages arising from that character. It is fully established that the vessel was captured, within the limits of the enemy's country, when she was about to sail with her cargo under the protection of the flag and pass of the enemy.

I shall therefore condemn both vessel and cargo as prize of war to the captors.

And on the 12th day of July, 1847, the following entry was made on the minutes, to wit:

Monday, 12 July, A. D. 1847. Special court.

Present: Hon. Theo. H. McCaleb.

JOHN T. McLAUGHLIN et al.
vs.
ONE BOX SPECIE. } 6374.

On motion of H. R. Denis and C. Watts, for claimants, ordered, that T. J. Durant, esq., district attorney for the United States, show cause, on Monday, the 9th August, at 10 o'clock, A. M., why a new trial should not be granted in this case, on the following grounds, to wit: 1. The judgment is contrary to law and evidence. 2. The case cited in support of the judgment is not analogous to the present case.

And on the 13th day of July, the following copy of the rule for a new trial was issued from the clerk's office, to wit:

United States district court, for the district of Louisiana. July 12th, 1847. Special court.

Present: Hon. Theo. H. McCaleb.

JOHN T. McLAUGHLIN and al.
vs.
ONE BOX OF SPECIE.

On motion of H. R. Denis and C. Watts, for claimants, ordered, that T. J. Durant, esq., district attorney for the United States, show cause, on Monday, the 9th August, at 10 o'clock, A. M., why a new trial should not be granted in this case, on the following grounds, to wit: 1. The judgment is contrary to law and evidence. 2. The case cited in support of the judgment is not analogous to the present case.

Clerk's office, July 13th, 1847.

A true copy from the minutes.

(Signed) N. R. JENNINGS, *Clerk*. [SEAL.]
By A. BOISBLANC, *D'y Clerk*.

Marshal's return on the foregoing rule:

Received July 13th, 1847, and on the same day served a copy of the within rule on T. J. Durant, esq., in person, at New Orleans.

(Signed) WM. SHEARER, *Dy. U. S. Marshal*.

And on the 18th day of November, 1847, the following entry was made on the minutes, to wit:

Thursday, November 18th, A. D. 1847.

Present: Hon. Theo. H. McCaleb.

JOHN T. McLAUGHLIN and al.
vs. } 6374.
ONE BOX OF SPECIE.

The rule taken in this case by the claimants, to show cause why a new trial should not be granted, came on this day for trial, Denis and Watts, esqs., for plaintiffs in rule, and Thomas J. Durant, U. S. district attorney, for defendants, appearing, when the court, after hearing argument of counsel, took the matter under consideration.

And on the 11th day of December, 1847, the following judgment on the rule for a new trial was entered on the minutes, to wit:

Saturday, December 11, A. D. 1847.

Present: Hon. Theo. H. McCaleb.

JOHN T. McLAUGHLIN and al.
vs. } 6374.
ONE BOX OF SPECIE.

The court having taken under consideration the rule for a new trial filed in the above case, did, this day, for reasons filed in open court, deliver its judgment therein in the words and figures following, to wit: It is ordered, adjudged, and decreed, that the rule for a new trial be dismissed.

And on the 21st day of December, 1847, the following motion for an appeal was entered on the minutes, to wit:

Tuesday, December 21st, A. D. 1847.

Present: Hon. Theo. H. McCaleb.

THE UNITED STATES, Capt. McLaughlin, and others,
vs. } 6374.
ONE BOX OF SPECIE.

On motion of C. Watts and H. R. Denis, *from* claimants, ordered, that said claimants have leave to appeal to the U. S. circuit court for the fifth circuit, on giving bond, with the French consul as security, in the sum of one hundred dollars.

And on the 22d day of December, 1847, the following bond was filed in the clerk's office, to wit:

Know all men by these presents that we, Baptiste Guillem and Jean Cassalet as principals, and Aimé Roger as surety, are held and firmly bound unto N. R. Jennings, clerk of the United States district court for the district of Louisiana, in the full and just sum of one hundred dollars, his executor, administrator, or assign; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, *be* these presents.

Sealed with our seals, and dated at New Orleans, this 21st day of December, A. D. 1847.

Whereas lately, in the district court of the United States, sitting in admiralty, in and for the district of Louisiana, in a suit depending in said court, between John T. McLaughlin, and others, and the United States, vs. One Box of Specie, (of which specie Baptiste Guillem and Jean Cassalet are claimants,) judgment was rendered against the said claimants; and the said Baptiste Guillem and Jean Cassalet having prayed an appeal from said judgment to the circuit court of the United States for the district of Louisiana: Now, the condition of the above obligation is such, that if the said Baptiste Guillem and Jean Cassalet shall prosecute their appeal to effect, and pay all the costs, if they fail to make their appeal good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) H. R. DENIS, [SEAL.]
For Guillem and Cassalet.
AIME ROGER. [SEAL.]

A. Roger has signed, and delivered in the presence of—
(Signed) H. R. DENIS.

And further, on the 22d day of December, 1847, the following agreement was filed in the clerk's office:

JOHN T. McLAUGHLIN and al.
vs.
ONE BOX OF SPECIE.

It is agreed that the transcript be sent in the circuit court this term, and all objections to the citation waived.

New Orleans, Dec. 22d, 1847.

(Signed) THOMAS J. DURANT,
Attorney of the United States for the district of Louisiana.
(Signed) H. R. DENIS,
For claimants.

Clerk's and judge's certificate to said transcript.

Clerk's office, United States district court for the district of Louisiana.

I, Needler R. Jennings, clerk of the court aforesaid, do hereby certify, that the foregoing fifty-one pages and seven lines form a true and correct transcript of the process, pleadings, documents, evidence adduced on trial, and other matters on file and of record in the suit of John T. McLaughlin et als., and the United States, vs. One Box of Specie, and numbered 6374 on the docket of the said court.

In testimony whereof I have hereunto signed my name and affixed the seal of the said court, at New Orleans, this 28th day of [SEAL.] December, A. D. 1847, and the 72d year of the independence of America. N. R. JENNINGS, *Clerk.*

I, Theodore Howard McCaleb, judge of the United States district court for the district of Louisiana, do hereby certify, that Needler R.

Jennings, who signed the foregoing certificate, was, at the time of so signing his name, and is now, the clerk of the district court of the United States for the district of Louisiana; that faith and credit are due and ought to be given to his attestations as such, and that the above certificate is in due form of law.

As witness my hand and seal, at New Orleans, this 28th day of December, A. D. 1847, and the 72d year of the independence of America.

THEO. H. McCALEB. [SEAL.]

And afterwards, to wit, on the 4th day of January, 1848, at the aforesaid December term of the said circuit court, the following entry was made of record:

ONE BOX OF SPECIE (Claimants whereof are appellants) vs. J. T. McLAUGHLIN and the United States. } 1657.

This cause having been called for trial this day, appeared the respective parties by their counsel, H. R. Denis & C. Watts for appellants, and the district attorney for appellees. Said case was taken up and argued before the Hon. John McKinley, presiding judge, on the transcript of the record from the district court; whereupon said case was submitted to his honor, who took the same under advisement.

And on the same day the following passport of Bte. Guillem was offered in evidence on the part of the appellants.

Consulat de France, à la Vera Cruz.

Passe-Port
No. 259.

Signalement.	
Age	31 ans.
Taille	1 metre 67 cent.
Cheveux	Noirs.
Sourcils	id.
Yeux	id.
Front	Decouvert.
Nez	Petit.
Bouche	Moyenne.
Menton	Rond.
Visage	Ovale.

Signés particuliers.

Signature du Porteur.
Bte. Guillem.

Solvit 10 f. 50.
Art. 46, du tarif.

Au Nom du Roi.

Nous, Consul de France à la Vera Cruz.

Prions M. M. les officiers civils et militaires de laisser passer librement le Sieur Guillem (Jean Baptiste) cuisinier, avec sa dame née Marceline Gramond et deux enfans en bas age.

Né à Coniza, (Aude.)

Demeurant à Vera Cruz.

Allant à la Nouvelle Orleans en passant par Tampico, et de lui donner aide et protection en cas de besoin.

Le présent passe-port, valable pour un an, a été délivré sur le dépôt d'un ancien passeport delivré à l'interesse par Mr. Le Préfet de la Gironde, le 25 Janvier, 1844.

Fait à Vera Cruz, le 13 Mars, 1847.

Pour Mr. Le Consul momentairement indisposé et par son autorization. Le chancelier du consulat. [SEAL.]

J. E. CAPDEVIELLE.

Par M. le consul, le

Endorsement on said passport.

Vu pour s'embarquer sur le navire du Havre la Jeune Nelly. Vera Cruz le 14 Mars, 1847.

Pour le consul de France, momentairement indisposé.

Le chancelier du consulat.

[SEAL.] J. E. CAPDEVILLE.

And afterwards, to wit, on the 14th day of January, 1848, at the aforesaid December term of said circuit court, the following decree was rendered:

ONE BOX OF SPECIE
vs.
J. T. McLAUGHLIN and the United States. } 1657.

This cause having been argued and submitted to his honor John McKinley, presiding judge of this court, at a former day hereof, and the court having maturely considered the same upon the transcript of records from the United States district court for the district of Louisiana, and being of opinion that the property seized and claimed by Baptiste Guillem is not liable to condemnation, and that the judgment of the said district court should be so modified. Wherefore, it is ordered, adjudged, and decreed, that the amount of specie claimed by the said Baptiste Guillem, to wit, the sum of two thousand eight hundred and sixty dollars be restored and refunded to him. And it is further ordered, adjudged, and decreed, that the decree of condemnation rendered against the property of the other claimant, Jean Cazalet, be affirmed with costs.

Judgment rendered 14th January, 1848.

Signed 9th February, 1848. J. McKINLEY.

Opinion of the court.

U. S. circuit court, district of Louisiana, December term.

BAPTISTE GUILLEM and Jean Cazalet, claimants and appellants,
vs.
THE UNITED STATES, John McLaughlin & al., and One Box of Specie, defendants and appellees.

Appeal from the U. S. district court for Louisiana, in admiralty.

The evidence establishes that Guillem was a subject of France, not naturalized, who had resided for about three years at Vera Cruz, in the capacity of a cook; and by his industry and economy had accumulated about $3,000 00. It was his intention to have left Mexico in the British steamer which was wrecked on the Island of Cuba in the winter of 1847. But he afterwards obtained a passport to go on board of La Jeune Nelly, a vessel which it is proved had run the blockade. From a despatch from Gen. Scott, dated 25th March, 1847, and published in the Union of the 10th April, it appears that Gen. Scott, with the un-

derstanding of Com. Perry, had agreed to open the blockade from the 13th to the 22d March, to enable neutrals to go on board their national ships of war. Guillem embarked with his wife and children on board La Jeune Nelly on the 20th March, 1847, having with him the sum of $2,860, and $600 belonging to John Cassalet, which were entrusted to Guillem to pay to the brother of Cassalet, at Bordeaux.

The court is of opinion that when Guillem left Mexico with an intention to return to France, neither he nor his property were to be considered as Mexican, or subject to capture as such. The law of nations permits neutrals to retire from an enemy's country with their property on the breaking out of war. (Wheaton, p. 371–378, and Kent Com. p. 75–78.) And surely when the commanding officer of a besieging army gives such a permission, it is to be considered as a practical administration of that law. The permission of Gen. Scott and Com. Perry to neutrals to leave Vera Cruz, left them at liberty to go where they pleased; and the guilt of the vessel did not attach to Guillem or his personal effects. It might be that there was no other neutral vessel on board of which Guillem and his family could have left Vera Cruz. It has been urged that the stay of Guillem, after the breaking out of the war, shows that he had no intention to leave Mexico. But it is to be considered that the war broke out unexpectedly; that there was a continual prospect of an accommodation between the belligerent parties; and that the port of Vera Cruz was all the time under blockade. The arrangement which Guillem made to leave in the British steamer in February, shows that it was not the mere presence of the blockade which drove him from Vera Cruz.

So much of the decree of the district court as condemns the property of Guillem is therefore reversed; and a decree is rendered in favor of Guillem for the amount of his claim.

The circumstances are different with regard to Cassalet, who never left, nor intended to leave, Mexico. *It* is proved to be a French subject, who had resided four or five years at Vera Cruz in the capacity of a waiter. Remaining in Mexico, his domicil there gives him and his property the character of Mexican, and subjects the property to condemnation. The decree of the district court, therefore, is affirmed with regard to his property.

Decree accordingly. J. McKINLEY.

And afterwards, to wit, on the 24th day of January, 1848, the following petition of appeal was filed in the clerk's office:

Circuit court of the United States, for the fifth circuit and district of Louisiana.

JOHN T. McLAUGHLIN et al.
vs.
A BOX OF SPECIE.

To the honorable the judges of the circuit court for the fifth circuit and district of Louisiana:

Be it remembered, that on this twenty-first day of January, in the

year one thousand eight hundred and forty-eight, before the honorable judges aforesaid, comes in his own proper person Thomas J. Durant, attorney of the United States for the aforesaid district of Louisiana, and in the name and behalf as well of the United States as of all other persons concerned, propounds and gives the said court to understand and be informed, that he is informed, and verily believes, that there is error in the judgment heretofore rendered by this honorable court, to the prejudice of the plaintiffs herein.

Wherefore he prays your honors for an appeal from said judgment to the Supreme Court of the United States.

THOMAS J. DURANT,
Attorney of the United States for the district of Louisiana.

And afterwards, to wit, on the 9th day of February, 1848, at the December term aforesaid of said circuit court, the following order and entry was made of record:

ONE BOX OF SPECIE
vs. } 1657.
J. T. MCLAUGHLIN and the United States.

In this case, it is ordered by the court that the Box of Specie libelled, and, by virtue of process issued from the United States district court for the district of Louisiana, in the suit of J. T. McLaughlin and the United States vs. one Box of Specie, seized by the United States marshal and deposited in the registry of said district court, be, and the same is hereby, ordered to be transferred to the registry of the United States circuit [court] for the district of Louisiana, so far as related to the claim of Baptiste Guillem, to wit, the sum of $2860.

And afterwards, to wit, on the 7th day of March, 1848, at the December term aforesaid of the said circuit, the following order and entry were made of record:

J. T. MCLAUGHLIN et al.
vs. } 1657.
A BOX OF SPECIE.

On motion of T. J. Durant, esq., U. S. district attorney, of counsel for the libellants, it is ordered that an appeal be allowed to the Supreme Court of the United States from the judgment of this court, returnable on the first Monday of December next.

Clerk's office, United States circuit court, fifth circuit and district of Louisiana.

I, Edmund Randolph, clerk of the circuit court of the United States, in and for the fifth circuit and district of Louisiana, do hereby certify, that the foregoing forty pages and twenty-eight lines contain a full, faithful, true, and complete transcript of the record and proceedings, and all the evidence adduced on the trial of the case of One Box of Specie vs. J. T. McLaughlin and the United States, number 1657, on file and of record in the said court.

1277.

In testimony whereof I have hereunto signed my name and affixed the seal of the said court, at the city of New Orleans, this thirteenth day of May, A. D. one thousand eight hundred and forty-eight, and the seventy-second year of the independence of the United States.

[L. S.]

ED. RANDOLPH, *Clerk.*
By J. Q. A. HOIT, *Dep. Clerk.*

I, Theodore H. McCaleb, judge of the district court of the United States for the district of Louisiana, and one of the judges of the circuit court of the United States, for the fifth circuit and district of Louisiana, do hereby certify, that Edmund Randolph is the clerk of the circuit court of the United States, for the fifth circuit and district of Louisiana, and that J. Q. A. Hoit, who signed the foregoing certificate, is deputy clerk of the said circuit court, and was at the time of so doing, and that due faith and credit are due and ought to be given to his acts as such, and that the foregoing certificate is in due form of law.

Witness my hand and seal, this thirteenth day of May, A. D. 1848.

THEO. H. McCALEB. [SEAL.]

Filed 4 December, 1848.